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CHAPTER VII

SLAVERY IN THE MARITIME PROVINCES

The French population of the territory by the sea, the Acadians, are described by the poet as:

Men whose lives glided on like rivers that water the woodlands,
Darkened by shadows of earth, but reflecting an image of heaven.

History does not bear out this idyll; but whatever their faults, at least the Acadians had the negative virtue of possessing no slaves,¹ Panis or Negro: nor was it until the coming of the people whose native air was too pure for a slave that the curse came upon the land.

The permanent settlement by the English of Acadia may fairly be considered as beginning when in 1749 Cornwallis founded Halifax.² Negro slaves were among the population of Halifax from the beginning or very shortly after. Where they came from is uncertain and it has been suggested that they came with the original settlers across the ocean. In the absence of any other explanation more plausible, this might be accepted. Lord Mansfield's decision in the Somerset case was a quarter of a century in the future. But it seems more probable that they were brought from the English Colonies, and some almost certainly were.

The official records of the country exhibit much evidence to this effect. In September, 1751, the *Boston Evening Post* advertised "Just arrived from Halifax and to be sold, ten strong hearty, Negro men mostly tradesman, such

¹ So far at all events as appears from any records that I have seen it is just possible however that "La Liberté, le neigre" mentioned in de Meulles' Census of Acadia in 1696 was a black slave, notwithstanding his name.

² From 1720 on, Annapolis Royal had a fairly firm government and settlement but it was not until Halifax was founded that it became certain that the country would remain English.

as caulkers, carpenters, sailmakers and ropemakers.³ Any person wishing to purchase may enquire of Benjamin Halliwell of Boston." Such an advertisement indicates that shipbuilding was slack at Halifax and more brisk at Boston. A conjecture may be hazarded that these slaves had been taken by their master to Halifax to build ships and then returned to the colony when required no longer in Acadia.

Some such conjecture receives a little assistance from a will still on record in Halifax. It was made February 28, 1752, by Thomas Thomas "late of New York but now of Halifax" and disposed of his "goods, chattels and negroes" including one bequest to this effect: "all my plate and my negro servant Orange that now lives with me at Halifax, I leave and bequeath to my son."

In the same year, *The Halifax Gazette* of May 15 contains the advertisement "Just imported and to be sold by Joshua Mauger at Major Lockman's store in Halifax, several Negro slaves as follows: A woman aged 35, two boys aged 12 and 13 respectively, two of 18 and a man aged 30." In the *Halifax Gazette* of Saturday, May 30, 1752, sale is advertised thus: "Just imported and to be sold by Joshua Mauger, at Major Lockman's store in Halifax, several negro slaves, viz., a very likely negro wench, of about thirty-five years of age, a Creole born, has been brought up in a gentleman's family, and capable of doing all sorts of work belonging thereto, as needle-work of all sorts and in the best manner; also washing, ironing, cooking, and every other thing that can be expected from such a slave: also two negro boys of about 12 or 13 years old, likely, healthy, and well-shaped, and understand some English. Likewise two healthy negro slaves of about 18 years of age, of agreeable tempers and fit for any kind of business: And also a healthy negro man of about 30 years

³ This and most of the facts, dates, etc., in this chapter are taken from the Rev. Dr. T. Watson Smith's fascinating article *The Slave in Canada* in the *Nova Scotia Historical Society's Collections*, Vol. X, Halifax, 1899.

of age." In September 1759, a Halifax merchant, Malachy Salter wrote to his wife then visiting relatives in Boston informing her of the state of the family, saying that "Jack is Jack still but rather worse. I am obliged to exercise the cat or stick almost every day. I believe Halifax don't afford another such idle, deceitful villain"—"Pray purchase a Negro boy if possible."

In the year of the surrender of Montreal, the *Halifax Gazette*, November 1, 1760, advertised "To be sold at public auction on Monday the 3rd of November, at the house of Mr. John Rider, two slaves, viz., a boy and a girl, about 11 years old; likewise a puncheon of choice cherry brandy with sundry other articles."

Some legal sanction, moreover, was given slavery. A General Assembly the first Elective Legislature in what is now Canada, met at Halifax in 1757. In 1762 the second session of the third General Assembly passed an act⁴ which seems not to have received very much attention from legists⁵ and writers. It contains a recognition of slavery. The act provides by section 2 that "in case any soldier, sailor, servant, apprentice, bound servant or negro slave or any other person whatsoever shall leave any pawn or pledge with a vendor of liquor for the payment of any sum exceeding five shillings for liquor such soldier, sailor, servant, apprentice bound servant or negro slave . . . or the master or mistress of such servant, apprentice, bound servant or negro slave" might by proceedings before a Justice of the Peace obtain an order for the restoration of the pawn or pledge—and the vendor might be fined 20 shillings "for the use of the poor."⁶

For this reason slavery could easily continue as subsequent records prove. In July, 1767, Charles Proctor of

⁴ (1762) 2 George 111, c. 1 (N. S.), *Statutes at Large, Nova Scotia, Halifax*, 1805, p. 77.

⁵ It is referred to in a letter from Ward Chipman to Chief Justice Blowers to be mentioned later. See post, p.

⁶ This Act was continued in 1784 by (1784) 24 George III, c. 14 (N.S.). *Statutes at Large, Nova Scotia*, p. 238.

Halifax sold Louisa, a "Mulotta" girl, to Mary Wood of Annapolis for £15 currency⁷ and next year Mary Wood assigned the girl to her daughter Mrs. Mary Day. In June, 1767, James Simonds of the St. John River wrote to Hazen and Jarvis at Newburyport, Massachusetts, a letter in which he complains of "that rascal negro, West" who cannot be got to do a quarter of a man's work. In an advertisement in a Halifax paper in 1769 are offered for sale to the highest bidder "two hogsheads of rum, three of sugar and two well-grown negro girls aged 14 and 12." These were clearly a consignment from the West Indies. The executors of John Margerum of Halifax deceased, in their accounts give credit for £29.9.4.½ "net proceeds of a negro boy sold at Carolina." In 1770 the executors of Joseph Gerrish of Halifax lost £30 on the sale of three Negroes for £150 to Richard Williams and Abraham Constable, the Negroes having been appraised at £180: and a Negro boy named John Fame was not then sold. In April 1770, Mrs. Martha Prichard of Halifax, widow, bequeathed to her daughter, wife of Moses Delesdernier a Negro slave woman named Jessie. If Mrs. Delesdernier did not wish to retain the slave, she was to be sold and the proceeds of the sale given to Mrs. Delesdernier. If she kept her, the slave at the death of Mrs. Delesdernier was to be the property of her son Ferdinand. By the same instrument the testatrix bequeathed to her grand-daughter a mulatto slave John Patten two and a half years old.

By the census of the year 1771 the Rev. James Lyon, the first Presbyterian Minister in Nova Scotia, is shown to have owned a colored boy, the only Negro in the township of Onslow and John Young in the township of Amherst also a Negro boy, the only one in the township. In Annapolis, Magdalen Winnett owned a man, woman and girl; Joseph Winnett owned a woman and a boy; Ebenezer Messenger and Ann Williams each a man, and John Stork

⁷ "Halifax currency" was at this time nine-tenths of Sterling £10 currency = £9 sterling and the 5 / dollar being 4/6 sterling.

of Granville owned a man the only Negro in the township; and Henry Evans of Annapolis had the previous year owned a colored girl.

Jacob Hurd of Halifax offered in 1773 a reward of £5 for the apprehension of his runaway Negro, Cromwell, a "short thick set strong fellow," strongly pock marked "especially on the nose" and wearing a green cloth jacket and a cocked hat. In July 1773, in the *Nova Scotia Gazette and Weekly Chronicle* the executor and executrix of Joseph Pierpont of Halifax advertised "a Negro named Prince to be sold at private sale." This perhaps indicated a repugnance to offering human beings for sale by auction. In the *Nova Scotia Gazette and Weekly Chronicle*, March 27, 1775 is an advertisement for the sale of a "likely well-made negro boy about 16 year old."

In the inventory of the estate of the late John Rock appeared in 1776 a Negro woman named Thursday. She was inventoried at £25 but sold for £20. In this year also a Windsor farmer, Joseph Wilson left by will two Negro women Byna and Sylla to his wife. In January 1779 the *Nova Scotia Gazette and Weekly Chronicle* advertised for sale an able Negro woman, about 21 year old, "capable of performing both town and country work and an exceedingly good cook." In the same year Daniel Stratford of Halifax left to his wife a Negro man slave Adam for life, after her death to become the property of his daughter Sarah Lawson. Matthew Harris of Picton sold for £50 to Matthew Archibald of Truro, tanner, a "Negro boy named Abram, about 12 years of age" born of Harris' Negro slave in Harris' house in Maryland.

In 1780 rewards were offered, one of 3 guineas, for the apprehension and delivery at the office of the Commanding Officer of Engineers at Halifax of two runaway Negro men; another "a handsome reward to be paid for securing in any gaol a Negro boy Mungo about 14 years old and well built"—the owner Benjamin De Wolfe of Windsor to be notified. That year the executors of Colonel Henry

Denny Denson of West Falmouth debit themselves with £75 received for "Spruce," £60 for "John" and £30 for "Juba" and credit themselves with £2.11.6 paid for taking two of these to Halifax probably for sale there.

Abel Michener of Falmouth advertised in 1781 a reward of £5 for the capture of a Negro named James; and Samuel Mack of Port Medway wanted a Negro named "Chance" returned.

Richard Wenman of Halifax in September of that year agreed to give his Negro, Cato, his liberty "if he will faithfully serve my said daughter, Elizabeth Susannah Pringle two years." Captain Wilson of the transport *Friends* requested in 1782 that masters of vessels will not ship as a seaman his runaway Negro lad Ben, saying: "He is my own property."

There is no need for further particularization; for we now come to the year of the definitive peace between the mother country and the new republic. As in the upper country so by the sea there was a great influx of Loyalists, accompanied in many instances by their slaves. Thereafter sales, advertisements for auctions, rewards for runaway slaves, bequests of slaves, &c., are very common and there were some manumissions. That, however, was not the cause of the great increase in the Negro population of the Maritime Province. The Island of St. John, afterwards Prince Edward Island had been set off as a separate province in 1769 but the Province of Nova Scotia included what became the Province of New Brunswick until 1786.

During the Revolutionary War, the British commanders, Sir Henry Clinton in particular, had made it a point to invite the slaves to the British line and many had accepted the invitation. No few of these refugees were of material service to the British troops in various ways both menial and otherwise. At the peace Washington demanded the return of these quondam slaves.⁸ Sir Guy Carleton

⁸ It will be remembered that in the Treaty of Peace it was agreed by Article VII "His Britanic Majesty shall with all convenient speed and without

refused but made a careful inventory of them with full description, name, former master, etc., so that Washington might claim compensation from the British Government, if he saw fit.⁹ In addition to these slaves somewhere about 3,000 freed Negroes accompanied the British troops on their withdrawal from New York, nearly all coming to Nova Scotia. Many of these after suffering great hardships were sent to Sierra Leone on the West Coast of Africa in 1792. Some remained in the province where their descendants are found until this day; but not in any very great numbers. The Loyalists, however, retained their property in their own slaves; and immigration was encouraged by the Act of 1790.¹⁰

The trade in Negroes was very brisk for some years. For example, on June 24, 1783, the *Nova Scotia Gazette and Weekly Chronicle* advertised for sale a Negro woman, "25 years of age, a good house servant." On December 11, 1783, Captain Alexander Campbell late of the South Carolina Loyalists sold to Captain Thomas Green late of the Royal Nova Scotia Foot a Negro woman named Nancy for

causing any destruction or carrying away any negroes or other property of the American inhabitants withdraw his armies, garrisons and fleets from the said United States. . . ."

Sir Guy Carleton claimed that the Negroes who had taken refuge in the British lines at once lost their status of slavery and became free. They were "not Negroes or other property of the American," a rather technical not to say finely drawn distinction but *in favorem libertatis*; and in any event Britain would not betray the helpless who had put their faith in her.

⁹ Washington did make a claim; but the United States had not carried out its part of the contract and Britain would not and never did pay. Jones' *Loyalist History of New York*, Vol. 2. p. 256, says that the number of Negroes who found shelter in the British lines was 2000 at least; probably this is an underestimate. Hay's *Historical Reading* at p. 249 gives the number of Negroes who came into Nova Scotia with their Masters at least 3000—and of free Negroes 1522 at Shelburne, 182 at St. John River. 270 at Guysborough, 211 in Annapolis County, and a smaller number at other places. 1200 were sent to Sierre Leone in 1792.

¹⁰ See ante, p. —. The Negro population in 1784 estimated at about 3000 was included in the 28,347 of *Disbanded Troops and Loyalists called New Inhabitants*, *Can. Arch.*, Report for 1885, p. 10. There were some free Negroes in various companies of the British forces in one capacity or another.

£40. Nancy two years later was sold by Green to Abraham Forst of Halifax and a year later still with her child Tom to Gregory Townsend.

A shipment was made by John Wentworth from Halifax to Surinam, Dutch Guiana, of nineteen Negro slaves, "all American born or well seasoned . . . perfectly stout, healthy, sober, orderly, industrious and obedient." These, said he, "I have had christened and would rather have liberated them than send them to any estate that I am not sure of their being treated with care and humanity which I shall consider as the only favour that can be done to me on this occasion "by his correspondent."¹¹

On October 29, 1787, John Rapalje, a Royalist, sent from Brooklign (Brookland or Brooklyn Ferry) to George Leonard by desire of his (R's) father a Negro woman named Eve about 35 years and her child named Suke about 15 to sell as he himself cannot go to Nova Scotia. Eve was one of the best servants "perfectly sober, honest" and the only fault she had was her near sight.

The records show occasional manumission also. In 1784 the inventory of the estate of John Porter late of Cornwallis, a Negro man is valued at £80. That same year Charles Montague of Halifax says: "I have only one Negro, named Francis; he is to have his freedom." In May 1787, Mar-

¹¹ The Negroes sent were Abraham, James, Lymas, Cyrus, John, Isaac, Quako, January, Priscella, Rachel, Venus, Daphne, Ann, Dorothy and four children Celia, William, Venus, Eleanora—reserving Matthew and Susannah at home. All these had been christened, February 11, 1784. "Isaac is a thorough good carpenter and master sawyer, perfectly capable of overseeing and conducting the rest and strictly honest; Lymas is a rough carpenter and sawyer; Quako is a field negro has met with an accident in his arm which will require some indulgence. The other men are sawyers and John also a good axeman. Abraham has been used to cattle and to attend in the house, &c. All the men are expert in boats. The women are stout and able and promise well to increase their numbers. Venus is useful in the hospital, poultry yard, gardens, etc. Upon the whole they are a most useful lot of Negroes."

John Wentworth, last Royalist Governor of New Hampshire and afterwards Sir John Wentworth, Lieutenant Governor of Nova Scotia, doubtless believed himself to be a good man and a good Christian.

The story of Eve and Suke *infra* is told by Archdeacon Raymond, 3 N. B. Mag., 1899, p. 221.

garet Murray, widow of Halifax by her will manumitted her two Negro women Marianne and Flora; and (when he was 21) her Negro boy Brutus. From the records of a trial at Shelburne, in a magistrate's court in 1788 it appears that one Jesse Gray of Argyle had sold a Negro woman for 100 bushels of potatoes. At a trial the ownership by Gray was proved and the sale confirmed.

We now come to the times of a Chief Justice whose heart was set on destroying slavery in the province of Nova Scotia, therein wholly differing from the Chief Justice of New Brunswick, George Duncan Ludlow, who had received his appointment on the separation of that province in 1784. The forward-looking jurist was Thomas Andrew Strange who became Chief Justice of the Supreme Court in 1791.¹² The same impulse for liberty which about this time was noted in the upper country manifested itself from time to time by the sea. Slaves ran away from their masters; the masters pursued and imprisoned them. Some blacks claimed freedom without fleeing. When a writ of habeas corpus came up in the Supreme Court, Chief Justice Strange did his best to avoid giving a decision. He knew that slavery was lawful but he knew it was detestable and he pursued a course which did not require him to stultify himself but which would nevertheless confer substantial benefits upon the black claiming liberty.

He endeavored in every case to bring the parties to an agreement to sign articles whereby the master would have the services of the Negro for a stated time, after the expiration of which the Negro received his freedom. When the master refused this, as sometimes there was a refusal, the Chief Justice required the matter to be tried by a jury, which usually found for the Negro.¹³

¹² He went to England in 1796 (it was said, for a visit) resigned his position in Nova Scotia, was Knighted and appointed Recorder of Fort St. George, Bombay, India.

¹³ A collateral ancestor of my own, the Reverend Archibald Riddell, had the advantage of a similar proceeding a century before. Being apprehended for taking part in the uprising of the Covenanters in Scotland he was given

The practice adopted was like the practice in cases of alleged villenage in England. It was recognized that slavery might exist in Nova Scotia, but it was made as difficult as possible for the master to succeed on the facts. Except the act already mentioned there was no statute recognizing slavery and an attempt in 1787 to incorporate such a recognition in the statute law failed of success by a large majority. The existing act, too, was given what seems a very forced and unnatural interpretation so as to emasculate it of any authority in that regard.

Salter Sampson Blowers, the Attorney General, fully agreed with the Chief Justice's plan. On one occasion he threatened to prosecute a person for sending a Negro out of the province against his will.¹⁴ The Negro managed to get back and the master acknowledged his right, so that no proceedings were necessary. After a number of verdicts for the alleged slaves, masters were generally very willing

(or sold) with others to a Scottish Laird who chartered a vessel and proceeded to take his human chattels to America for sale. The plague broke out on the ship, the Laird and his wife died of it as did some of the crew. When the ship reached New Jersey, there being no master, the "slaves" escaped up country. The Laird's son-in-law and personal representative came to America and claimed Riddell and others. The governor called a jury to determine whether they were slaves and the jury promptly found in their favor. Riddell preached in New Jersey until the Revolution of 1688 made it safe for him to return to Scotland. Juries in such cases are liable to what Blackstone calls "pious perjury." All this practice was based upon the common law proceedings when a claim was made of villenage. When a person claimed to be the lord of a villein who had run away and remained outside the manor unto which he was regardant, he sued out a writ of neif, that is, *de nativo habendo*. The sheriff took the writ and if the *nativus* admitted that he was villein to the lord who claimed him, he was delivered by the sheriff to the lord of the manor; but if he claimed to be free, the sheriff should not seize him but the Lord was compelled to take out a *Pone* to have the matter tried before the Court of Common Pleas or the Justices in Eyre, that is, the assizes. Or the alleged villein might himself sue out a writ of *libertate probanda*: and until trial of the case the lord could not seize the alleged villein. The curious will find the whole subject dealt with in Fitzherbert's *Natura Brevium*, pp. 77 sqq.

¹⁴ This is very much like the Chloe Cooley case in Upper Canada. I do not know what form the prosecution could possibly take if the Negro was in fact a slave. See Chapter V, note 5 ante.

to enter into articles whereby the slave after serving faithfully for a fixed number of years was given his freedom.

After Blowers became Chief Justice, 1797,¹⁵ he continued Chief Justice Strange's practice with marked results. In one case of which he tells where he had discharged a black woman from the Annapolis gaol on habeas corpus and an action had been brought, the plaintiff proved that he had bought her in New York; but the Chief Justice held that he had not proved the right of the seller so to dispose of her and directed the jury to find for the defendant which they promptly did.

Slavery continued, however. Almost every year we find records of sales, advertisements for runaway slaves, bequests of slaves, &c, till almost the end of the first decade of the 19th century, the latest known bill of sale is dated March 21, 1807 and transfers a "Negro Woman named Nelly of the age of twenty five or thereabout." It was, however, decadent and from about the beginning of the 19th century was quite as much to the advantage of the Negro in many cases as that of the master.

¹⁵ It is said that August 1797 was the date of the last public slave sale at Montreal, that of Emmanuel Allen for £36.

The last advertisement for sale by auction of a slave in the Maritime Provinces seems to be that in *The Royal Gazette and Nova Scotia Advertiser* of September 7, 1790, where William Millet of Halifax offers for sale by auction September 9 "A stout likely negro man and sundry other articles."

In 1802 the census showed that there were 451 Blacks in Halifax; in 1791 there were 422.

Dr. T. Watson Smith says in a paper "Slavery in Canada" republished in "Canadian History," No. 12, December, 1900, at p. 321.

"About 1806, so Judge Marshall has stated, a master and his slave were taken before Chief Justice Blowers on a writ of habeas corpus. When the case and the question of slavery in general had been pretty well argued on each side, the Chief Justice decided that slavery had no legal place in Nova Scotia."

I have not been able to trace such a decision and cannot think that it has been correctly reported. Dr. Smith is wholly justified in his statement "there is good ground for the opinion that this baneful system was never actually abolished in the present Canadian Provinces until the vote of the British Parliament and the signature of King William IV in 1833 rendered it illegal throughout the British Empire."

A final effort to legalize slavery in Nova Scotia was made in 1808. Mr. Warwick, member for Digby Township, presented a petition from John Taylor and other slave owners setting up that the doubts entertained by the courts rendered their property useless and that the slaves were deserting and defying their masters. They asked for an act securing them their property or indemnifying them for their loss. Thomas Ritchie member for Annapolis introduced a bill to regulate Negro servants within the province. The bill passed its second reading January 11, 1808, but failed to become law; and the attempt was never renewed.

New Brunswick was separated from Nova Scotia in 1784. The Chief Justice of that province was not as averse from slavery as his brother of Nova Scotia. One of the most interesting and celebrated cases came before the Supreme Court of New Brunswick in Hilary Term, February 1800. Captain Stair Agnew who had been an officer in the Queen's Rangers settled opposite Fredericton. He was a man much thought of as is shown by his being chosen for thirty years to represent York County in the Legislature. He owned a slave Nancy Morton¹⁶ who claimed her freedom and whom apparently he had put in charge of one Caleb Jones. A writ of habeas corpus was obtained directed to Jones and the matter was arranged to be argued before the full court of four judges. For the applicant ap-

¹⁶ I. Allen Jack, Q. C., D. C., L., of St. John, New Brunswick, gives a full account of this case from which (and similar sources) most of the facts are taken. In a paper read before the Royal Society of Canada May 26, 1898, *Trans. R. S. Can.*, 1898, pp. 137 sqq., Dr. Jack conjectures that Nancy Morton is the Negro female slave conveyed by bill of sale registered in the office of the Register of Deeds, St. John's, N. B. Slaves were treated as realty as regards fieri facias under the Act of 1732 (see ante, p. —) and at least "savoured of the realty." The bill of sale registered January 31, 1791, was dated November 13, 1778, and was executed by John Johnson of the Township of Brooklyn in King's County, Long Island, Province of New York. It conveyed with a covenant to warrant and defend title to Samuel Duffy, Innkeeper for £40 currency (say \$100) "a certain negro female about fourteen years of age and goes by the name of Nancy," pp. 141, 142. However that may be, Stair Agnew bought Nancy from William Bailey of the County of York in the Province of New Brunswick for £40 with full warranty of title as a slave.

peared Ward Chipman¹⁷ and Samuel Denny Street for the master, Jonathan Bliss, Attorney General of the province, Thomas Wetmore, John Murray Bliss, Charles J. Peters and Witham Botsford, all men of ability and eminence. On the Bench were Chief Justice Ludlow and Puisne Justices Allen, Upham and Saunders.

The addresses of the Attorney-General and Mr. Chipman are extant. The former divided his speech into thirty-two heads; the latter took eighty pages of foolscap for his. The arguments were extremely able and exhaustive,¹⁸ everything in history, morals and decided cases being brought to bear. The case took two full days to argue and after careful consideration the court divided equally, the Chief Justice and Mr. Justice Upham affirming the right of the master and Mr. Justice Allan and Mr. Justice Saunders held for the alleged slave.

The return of Jones to the writ was that Nancy "was at the time of her birth and ever since hath been a female Negro slave or servant for life born of an African Negro slave and before the removal of the said Caleb Jones from Mary Land to New Brunswick was and became by purchase the lawful and proper Negro slave or servant for life of him the said Caleb Jones . . . , that the said Caleb Jones in the year of our Lord 1785 brought and imported the said . . . Nancy his Negro slave or servant for life into the Province of New Brunswick . . . and has always hitherto held the said . . . Nancy as his proper Negro slave or servant for life . . . or by laws he has good right and authority to do. . . ."¹⁹

¹⁷ He was born in Boston in 1753, the son of John Chipman, a member of the Bar. Graduating at Harvard, he joined the Boston Bar and practised in that City until 1776. After the Peace he went to England and in 1784 sailed for New Brunswick of which he was appointed Solicitor General. After a quarter of a century of successful practice he was appointed 1808 a puisne judge of the Supreme Court. He died in February, 1826.

His services to Nancy Morton were given without fee or hope of reward.

¹⁸ That of Mr. Chipman is given in *Trans. R. Soc. Can.*, 1898, pp. 155-184.

¹⁹ It will be seen that the return sets up that Jones bought and owned the slave and the case was argued on that hypothesis, but the historians say that Captain Stair Agnew was the owner. The point is not of importance.

The Chief Justice based his opinion on what he called the "Common Law of the Colonies"—and although that expression was ridiculed at the time and has been since, there is no difficulty in understanding it. He meant custom recognized as law not contained in an express legislative enactment. In that sense a modern lawyer will agree that he was right. Practically all the English colonies had slavery thoroughly recognized and often without or before legislation; and all the well known legal maxims asserted the cogency of such custom.²⁰ Mr. Justice Allen considered that no human power could justify slavery—and his brother Saunders agreed with him. It would seem that these judges were concerned with what the law should be, the others with what it actually was.²¹

In the result the return was held sufficient and the master had his slave. But the decision of the divided court had its effect. Agnew reconveyed Nancy to William Bailey from whom he had bought her and she bound herself to serve for fifteen years, then to receive her freedom.²² The result of this case was that while slavery was

²⁰ *Mos regit legem, Mos pro lege, Leges moribus servant, Consuetudo est optimus interpret legum*, custom is the life of the law, custom becomes law, &c., &c. That slavery was necessary and therefore legal in the American Colonies was admitted in the Somerset case.

²¹ The modern lawyer, in my opinion, would find no difficulty in coming to the same conclusion as the Chief Justice.

Mr. Chipman in his interesting correspondence with Chief Justice Blowers (*Trans. R. Soc. Can.*, 1898, pp. 148 sqq.) admits that if his opponents had hit upon the Nova Scotia Statute of 1762 as revised in 1783 "the conclusiveness of their reasoning on their principles would have been considered as demonstrated." He adds: "In searching your laws upon this occasion I found this clause but carefully avoided mentioning it," which raises a curious question in legal ethics.

²² The reconveyance to Bailey, a quit claim deed, is witnessed by George Leonard and Thomas Wetmore and is dated February 22, 1800. The indenture by which Nancy bound herself for fifteen years is dated February 23, 1800.

If Dr. Jack is right in his conjecture the argument took place when she was 36 and she would receive her freedom when she was 51. Agnew challenged Judge Allen for some reflection upon him by the Judge; the challenge was declined and Agnew then challenged Street who accepted—and they fought a bloodless duel. Street later in 1821 fought a duel with George Lud-

not formally abolished, it before many years practically ceased to exist.²³

Prince Edward Island was called Isle St. Jean until 1798. In this island slavery had the same history as in the other maritime provinces. Shortly after the peace Negro slaves were brought into the Island by their United Empire Loyalist masters. As late as 1802 we find recorded the sale of "a Mulatto boy three years old called Simon" for £20, Halifax currency, then £18 sterling, and a gift of "one Mulatto girl about five years of age named Catherine." We also find Governor Fanning (1786-1804), freeing his two slaves and giving one of them, Shepherd, a farm.

In Cape Breton which was separate from 1784 to 1820, Negro slaves were found as early as the former date: "Cesar Augustus, a slave and Darius Snider, black folks, married 4th September 1788," "Diana Bestian a Negro girl belonging to Abraham Cuyler Esq" was buried September 15, 1792 and a Negro slave was killed in 1791 by a blow from a spade when trying to force his way into a public ball in Sydney.²⁴ In this province, too, slavery met the same fate.

There is now to be mentioned an interesting series of circumstances.²⁵ During the War of 1812-15 the British navy occupied many bays and rivers in United States terri-

low Wetmore over words which passed on leaving the Court. Wetmore was struck in the head and died in a few hours. Street was tried and acquitted. One result of this case was that Mr. Justice Upham freed his slaves. His wife had six inherited from her father and he himself had some, one a girl born in the East Indies whom he had bought from her master in New York, the master of a ship, afterwards married a soldier in Colonel Allen's regiment.

²³ What is believed to be the last advertisement for the sale of a slave in any maritime province is in the New Brunswick *Royal Gazette* of October 16, 1809 when Daniel Brown offered for sale Nancy a Negro woman, guaranteeing a good title. The latest offer of a reward for the apprehension of a runaway slave is said to be in the same paper for July 10, 1816.

²⁴ For this act the perpetrator was excluded by his masonic lodge; being brought to trial before the Supreme Court in August 1792 he was "honourably acquitted" and afterwards he was reinstated by his lodge.

²⁵ Seldom mentioned and never much boasted of in the United States.

tory and in some cases troops were landed where there was a slave population. These forces came into possession of many slaves, mostly voluntary fugitives, some seduced and some taken by violence from their masters. Admiral Cochrane in April 1814 issued a proclamation inviting all those who might be disposed to emigrate from the United States for the purpose of becoming free settlers in some of "His Majesty's Colonies" to come with their families on board of the British men of war and offering them the choice of joining the British forces or being sent as free settlers to a British possession. He did not say "slaves" but no one could mistake the meaning.²⁶ Negroes came in droves. Some were taken to the Bahamas and the Bermudas where their descendants are to be found until this day; many were taken to Nova Scotia and New Brunswick.²⁷

When the Treaty of Peace was concluded at Ghent, December 24, 1814 the United States did not forget the slaves who had got away from the home of liberty. Article 1 provided for the delivery up of all places taken by either party without carrying away any property captured "or any slaves or other private property." The United States demanded the restoration of "all slaves and other private property which may now be in possession of the forces of

²⁶ The word *Camouflage* may be new. The practice antedated humanity.

²⁷ There is a record of 371 arriving at St. John from Halifax on May 25, 1815, by the *Romulus*, who had taken refuge on board the British Men of War in the Chesapeake. The Negro settlement at Loch Lomond was founded by them.

At the Census of 1824, 1421 "persons of color" were found in New Brunswick. The Very Rev. Archdeacon Raymond, an excellent authority, thinks most of these "were at one time slaves or the children of slaves," but many were not slaves in New Brunswick.

Those that were brought by Admiral Cochrane to Halifax became a great burden to the community. It was proposed in 1815 by the British Government to remove them to a warmer climate, but this scheme does not seem to have been carried out. By a census taken in 1816 there was found to be 684 in Halifax and elsewhere in Nova Scotia. In the winter of 1814-15 they had suffered rather severely from small pox and were vaccinated to prevent its spread. Some were placed on Melville Island.

His Britannic Majesty." The British officers refused to surrender the slaves contending that the real meaning of the treaty did not cover the case. At length in 1818 a convention was entered into that it should be left to the Emperor of Russia²⁸ to decide whether the United States by the true intent of Article 1 was entitled to the restitution or full compensation for the slaves.

In 1822 the Emperor decided in favor of the United States. Thereupon the next year (1824) a mixed commission of two commissioners and two arbitrators determined the average value to be allowed as compensation;²⁹ for slaves taken from Louisiana \$580; from Alabama Georgia and South Carolina, \$390; from Virginia, Maryland and all other States \$280.

The commissioners adjourned for the purpose of enabling evidence to be obtained as to the numbers. Clay submitted to the British Government that 3601 slaves had been taken away but was willing for a settlement to accept the price of 1650. Britain declined, but the commissioners failed to agree and finally by diplomacy in 1827 Britain agreed to pay £250,000 or \$1,204,960 in full for slaves and other property. Thus Britain assured the freedom of more than 3,000 slaves and paid for them, a fitting prelude to the great Act of 1833 whereby she freed 800,000 slaves and paid £20,000,000 for the privilege.³⁰

²⁸ Presumably because he had the greatest number of serfs in the world and was, therefore, the best judge of slaves.

²⁹ Of course, Britain refused to give up a single fugitive. She could not betray a trust even of the humblest. She knew that in "the land of the free and the home of the brave" for the Negro returned to his master, to be brave was to incur torture and death and death alone could make him free.

³⁰ The Act (1833) 3, 4 William III, c. 73 (Imp.), passed the House of Commons August 7 and received the Royal Assent August 28, 1833; and there were no slaves in all the British world after August, 1838.